

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EUR-12 ISO-00 EB-07 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-03 LAB-04
NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04
ITC-01 PRS-01 SP-02 OMB-01 NSCE-00 SSO-00 USIE-00
INRE-00 FEA-01 AF-08 ARA-06 EA-07 NEA-10 IO-13 /125 R

DRAFTED BY TREASURY:THUME:LPP

APPROVED BY EB/OT/STA:JSPIRO

EUR/CE:LHEICHLER

EB/OT/STA:MCJONES

EUR/RPE:RBRESLER

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FM SECSTATE WASHDC

TO AMEMBASSY BONN IMMEDIATE

INFO USMISSION EC BRUSSELS

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E.O. 11652:N/A

TAGS: ETRD, GW

SUBJECT: COUNTERVAILING DUTY LITIGATION - FLOAT GLASS FROM
GERMANY

REF: A) STATE 275271; B) BONN 19255

1. LAST WEEK THE U.S. CUSTOMS COURT DENIED USG'S MOTION
TO DESIGNATE U.K. FLOAT GLASS AS TEST CASE. IT NOW
BECOMES NECESSARY TO PROCEED WITH DISCOVERY SEPARATELY
IN EACH OF THE FLOAT GLASS CASES (BELGIUM, WEST GERMANY,
U.K.). GERMAN GOVERNMENT MUST NOW ADVISE WHETHER IT WILL
AGREE TO DISCLOSE INFORMATION SUBMITTED TO TREASURY DURING
COURSE OF COUNTERVAILING DUTY INVESTIGATION.

2. THE JUSTICE DEPARTMENT IS WILLING TO SEEK A PROTECTIVE
ORDER WHICH WOULD RESTRICT DISCLOSURE OF VALUE
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INFORMATION SUBMITTED BY FRG AND NOT BY COMPANIES TO JUDGE

ALONE (OPTION 1). HOWEVER, JUSTICE ADVISES THAT SHOULD THIS OPTION 1 BE DENIED, HAVING PURSUED IT COULD JEOPARDIZE CHANCES OF OBTAINING PROTECTIVE ORDER LIMITING DISCLOSURE TO JUDGE AND PLAINTIFFS' COUNSEL (OPTION 2). JUSTICE ADVISED THAT ONLY OPTION 2 (DESCRIBED IN REF A) CAN BE USED FOR INFORMATION SUBMITTED BY COMPANIES.

3. IN SEEKING PROTECTIVE ORDER (OPTION 1 OR 2) IT WILL BE NECESSARY TO OBTAIN APPROPRIATE AFFIDAVIT FROM FRG WHICH NOTES THAT INFORMATION IS CONSIDERED CONFIDENTIAL AND WOULD NOT HAVE BEEN SUBMITTED TO USG WITHOUT ASSURANCES THAT IT WOULD BE TREATED AS STRICTLY CONFIDENTIAL. COMPANION AFFIDAVIT WILL BE SUBMITTED BY TREASURY NOTING COMMITMENT OF CONFIDENTIAL TREATMENT AND ADVERSE IMPLICATIONS FOR FUTURE ADMINISTRATION OF COUNTERVAILING DUTY LAW IF SUCH ASSURANCES ARE NOT HONORED BY COURTS AS WELL.

4. WITH DENIAL OF MOTION TO DESIGNATE U.K. AS TEST CASE, JUSTICE FEELS THAT MAXIMUM IMPACT CAN BE OBTAINED BY PROCEEDING SIMULTANEOUSLY WITH ALL THREE FLOAT GLASS CASES. WITH A TWO WEEK EXTENSION ALREADY GRANTED IN THE U.K. CASE, NOTICE TO SEEK EITHER OPTION 1 OR 2 MUST BE FILED WITH COURT ON TUESDAY, DECEMBER 21. IN ORDER TO ALLOW FOR PREPARATION OF APPROPRIATE AFFIDAVIT DECISION BY GERMAN GOVERNMENT MUST BE MADE AND COMMUNICATED TO TREASURY (DAS SUCHMAN) ASAP BUT NO LATER THAN TUESDAY, DECEMBER 14.

5. EMBASSY IS REQUESTED TO DISCUSS THESE DEVELOPMENTS WITH GERMAN OFFICIALS AS SOON AS POSSIBLE. YOU MAY ASSURE THEM THAT IN THE EVENT THEY CHOOSE OPTION 1 FOR THE VALUE INFORMATION AS WE BELIEVE WILL BE THE CASE, AND IT IS DENIED BY THE COURT, FRG WILL BE ADVISED IMMEDIATELY AND OPTION 2 WILL BE ATTEMPTED IF FRG DESIRES. SHOULD THIS TRANSPIRE, WE EXPECT THERE WILL BE VERY LITTLE TIME FOR FRG TO INDICATE WILLINGNESS TO PURSUE OPTION 2. DAS SUCHMAN INDICATED THAT IN NO CASE WILL THE INFORMATION SUBMITTED IN CONFIDENCE BE DISCLOSED EXCEPT AS AGREED TO LIMITED OFFICIAL USE

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BY FRG THOUGH THIS COULD BE TANTAMOUNT TO CONCEDED THE CASE IF THE COURT DOES NOT GRANT A PROTECTIVE ORDER.

6. SITUATION HAS BEEN DISCUSSED WITH GERMANY EMBASSY AND COUNSEL FOR THE GERMAN COMPANIES. ROBINSON

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